88-478

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF
THE UNITED STATES

October Term, 1988

STANLEY STERNER, ET AL.,
Appellants Pro Se

v.

CAROL J. JONES, ET AL.,
Appellees.

On Appeal from
the Supreme Court
of Virginia

# JURISDICTIONAL STATEMENT

STANLEY STERNER
Appellant Pro Se
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RICK STANLEY STERNER
Third-Party Appellant
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## QUESTIONS PRESENTED

I. Under Rule 3:18 of the Rules of the Supreme Court of Virginia, the Trial Court shall, inter alia, enter judgment at any time after the parties are at issue, sustaining the moving party's motion to strike the evidence of the opposing party.

1. Whether the said provision of Rule 3:18 of the Rules of the Supreme Court of Virginia, as applied and/or on its face violates pro se appellant's Federal First Amendment right to petition the Trial Court for the redress of his grievances.

2. Whether the same provision as applied and/or on its face violates his Federal Fifth Amendment right with respect to the Due Process Clause.

3. Whether this provision as applied and/or on its face violates his Federal Seventh Amendment right to a trial by civil jury.

4. Whether this provision as applied and/or on its face violates his Federal Fourteenth Amendment rights with respect to both the Due Process and Equal Protection Clauses.

II. Under Rule 3:17 of the Rules of the Supreme Court of Virginia, the Trial Court shall, inter alia, enter judgment for the amount due against the defaulting party.

1. Whether the said provision of Rule 3:17 of the Rules of the Supreme Court of Virginia, as applied and/or on its face violates third-party defendant appellant's Federal Sixth Amendment right

to the assistance of an lay advisor.

2. Whether the same provision as applied and/or on its face violates his Federal
Ninth Amendment right to the assistance of an lay advisor.

3. Whether this provision as applied and/or on its face violates his Federal Fifth Amendment right with respect to the Due Process Clause.

4. Whether this provision as applied and/or on its face violates his Federal Fourteenth Amendment rights with respect to both the Due Process and Equal Protection Clauses.

## LIST OF PARTIES

The defendants in the proceeding below are Carol J. Jones, Chad A. Shanholtz, David Carroll Clowser, and Winchester

Gardens Apartments a Limited Partnership.

The plaintiffs below are Stanley Sterner and Rick S. Sterner a third-party defendant appellant.

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## OPINION BELOW

The May 23, 1988 order of the Supreme Court of Virginia (App. A, infra, 30) refusing the petition for appeal, is not reported.

The October 13, 1987 order of the Circuit Court of the City of Winchester, Virginia (App. B. infra, 32) is not reported.

## JURISDICTION

On May 23, 1988, the Supreme Court of Virginia entered an order (App. A, infra, 27) refusing the petition for appeal.

On August 19, 1988, a timely Notice of Appeal (App. C, infra, 37) was filed in the Supreme Court of Virginia.

The jurisdiction of this Court is invoked under: a) U.S.C.Const.Amend. 1, which guarantees the appellant the right to petition this Court for the redress of his grievances. McDonald v. Smith, 105 S.Ct.

2787 (1985); Wayte v. U.S., 105 S.Ct. 1524 (1985); Laker Airways Ltd. v. Pan American World Airways, 604 F.Supp. 280 (1984), b) 28 U.S.C. sec. 1257(2), In exceptional cases this Court will note probable jurisdiction on questions not raised or resolved in the lower court. Youakim v. Miller, 96 S.Ct. 1399 (1976). A challenge raised for the first time in this Court will be reviewed when based on nonfrivolous constitutional grounds. Glidden Co. v. Zdanok, 82 S.Ct. 1459 (1962), c) 28 U.S.C. sec. 2103, in the event that appellate jurisdiction under 28 U.S.C. sec. 1257(2) is found lacking, the papers be acted upon as a petition for certiorari. Kulko v. Superior Court of California, Etc., 98 S.Ct. 1690 (1978).

CONSTITUTION AND STATUTES

1. The Federal First Amendment to the Constitution provides, in relevant part:

Congress shall make no law * * * prohibiting * * * or abridging the * * * right of the people * * * to petition the Government for a redress of grievances.

2. The Federal Fifth Amendment to the Constitution provides, in relevant part:

No person shall be * * * deprived of life, liberty, or property, without due process of law * * * .

3. The Federal Sixth Amendment to the Constitution provides, in relevant part:

* * * the accused shall * * * have the assistance of counsel for his defence.

4. The Federal Seventh Amendment to the Constitution provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

5. The Federal Ninth Amendment to the Constitution provides:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by

the people.

6. The Federal Fourteenth Amendment to the Constitution provides, in relevant part:

> * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

7. Rule 3:17 of the Supreme Court of Virginia provides, in pertinent part:

> A defendant who fails to plead to a notice of motion for judgment within the required time is in default. He waives trial by jury and all objections to the admissibility of evidence. He is not entitled to notice, including notice to take depositions, of any further proceedings in the case * * * . The court shall, on motion of the plaintiff, enter judgment for the amount appearing to the court to be due. * * *.

8. Rule 3:18 of the Supreme Court of Virginia provides, in pertinent part:

> Either party may make a motion for summary judgment at any time after the parties are at issue. If it appears from the pleadings, the orders, if any,

made at pretrial conference, the admissions, if any, in the proceedings, or, upon sustaining a motion to strike the evidence that the moving party is entitled to judgment, the court shall enter judgment in his favor. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone * * * . (emphasis added).

STATEMENT OF THE CASE

The pro se appellant's assignments of error (P. 2-6), statement of the questions presented (P. 6-8) and argument (P. 12-33) in his Petition For Appeal (P. ___) to the Supreme Court of Virginia, dated January 11, 1988, raised the following federal questions which it is asking this Court to review:

1. In the application of Rule 3:18 of the Rules of the Supreme Court of Virginia, the Trial Court ruled that the issue of punitive damages and negligence will not be heard by the jury, this ruling violated appellant's Federal

Seventh Amendment rights to a jury trial, Fifth Amendment rights to due process and equal protection of the law, and First Amendment rights for a redress of grievances, made applicable to the states by the Fourteenth Amendment (P. 2, 5-6, 8-9, 18-19, 27-29);

2. In the application of Rule 3:17 of the Rules of the Supreme Court of Virginia, the Trial Court ruled that third-party defendant appellant, Rick S. Sterner was in default, and entered judgment against him, for failing to timely respond to third-party plaintiffs' motion for judgment. This ruling violated Rick Sterner's Federal Sixth and Ninth Amendment rights to the assistance of an lay advisor, made applicable to the states by the Fourteenth Amendment (P. 3, 9, 21-22).

Although the pro se appellant raised

said federal questions, in an insistent, timely and explicit manner, at the Trial Court and State Court level, challenging the application of said statutes on constitutional grounds, the Supreme Court of Virginia chose to remain silent and tight-lipped with respect to their order (App. A, infra, 30), refusing the Petition for Appeal, and grounds thereof.

## SUBSTANTIALITY OF THE FEDERAL QUESTIONS

The following is a statement of reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution:

1. Rule 3:18 of the Rules of the Supreme Court of Virginia is unconstitutional in its application and/or on its face, in that the Trial Court in application of said rule abused its discretion

and power and violated pro se appellant's Federal First Amendment right for a redress of grievances, his Fifth Amendment right to due process and equal protection of the law, and his Seventh Amendment right to a civil jury, made applicable to the states by the Fourteenth Amendment, by granting appellees' motion to strike all of appellant's evidence in support of his claims for punitive damages and negligence (Jurisdictional Statement page 5 (J. 5)).

In the Brief of the Appellees (B. 3), dated February 3, 1988, the defendants cite Evans v. Schuster, 178 Va. 61, 16 S.E.2d 301 (1941); Turk v. Martin, 124 Va. 103, 97 S.E. 351 (1918) for the proposition that the Court will initially say whether the evidence warrants an allowance for punitive damages. These

cases are distinguishable from the case at bar, in that in Evans, supra, and Turk, supra, the Court initially allowed the plaintiffs to submit all their evidence on punitive damages to the jury and judge, and not until it was time to submit the instructions to the jury with respect to punitive damages, did the Court intervene to determine if the evidence was sufficient to establish a proper case for the allowance of punitive damages. In the case at bar the Trial Court prematurely precluded the appellant from presenting any evidence upon the issues of punitive damages, negligent entrustment and negligence and did so in limine, prior to jury selection and the presentation of any evidence. In fact the Trial Court prematurely precluded the appellant from presenting any evidence relevant to punitive damages,

negligent entrustment and negligence, throughout the proceeding and well before instructions were to be submitted to the jury.

Rule 3:18 of the Rules of the Supreme Court of Virginia, in its application and/or on its face violates appellant's Federal First Amendment rights to petition this Court for the redress of his grievances. The right to litigate is protected under the Federal First Amendment's guarantee of free speech and the right to petition. Laker Airways Ltd. v. Pan American World Airways, 604 F.Supp. 280 (1984); McDonald v. Smith, 105 S.Ct. 2787 (1985); Brotherhood of Railroad Trainmen v. Virginia, 84 S.Ct. 1113 (1964). In the case at bar the Trial Court in the application of said Rule prematurely precluded the appellant from

presenting any evidence in support of the issues of punitive damages, negligent entrustment and negligence and thus violated his Federal First Amendment rights to litigate for a redress of his grievances with respect to the aforesaid factual issues before a civil jury.

In Boyd v. Bulala, 647 F.Supp. 781 (W.D.Va.1986) the District Court held that an award of punitive damages may be based on a finding that the defendant acted under circumstances amounting to a willful and wanton disregard of the plaintiff's rights, without including the element of malice. Citing Wright v. Everett, 197 Va. 608, 90 S.E.2d 855 (1956); Virginia Model Jury Instruction No. 9.080. The District Court also held that the right to a civil jury provided by the Virginia Constitution is equivalent to the Federal Seventh Amendment

right and having as its purpose the settlement of questions of fact, includes the question of punitive damages. Va. Const. Art. 1, Sec. 11, U.S.C.A. Const. Amend. 7. In the case at bar the issue of punitive damages was joined, when the Trial Court prematurely precluded and eliminated appellant's presentation of his evidence to the jury in support of punitive damages, and did so in violation of his Federal Seventh Amendment right to a civil jury on the issue of punitive damages. Boyd, supra; Stanardsville Volunteer Fire Co. v. Berry, 331 S.E.2d 466 (Va.1985); U.S. v. Snepp, 595 F.2d 926 (4th Cir.1979).

A finding of wanton negligence in support of punitive damages, on the part of the owner, can be inferred from evidence showing a history and personal charac-

teristics of unfitness and incompetence, on the part of the driver, where the owner has failed to discover the driver's unfitness and incompetence. Wallen v. Allen, 231 Va. 289, 343 S.E.2d 73 (1986); Crowell v. Duncan, 145 Va. 489, 134 S.E. 576 (1926). In the case at bar the appellees, Winchester Gardens Apartments a Limited Partnership, owners of the vehicle, driven by appellee, David Carroll Clowser, and/or their agent, appellee, Carol J. Jones, failed to discover that said driver was unfit and incompetent to operate said vehicle, in that at the time of the collision (July 7, 1986), Clowser was operating said vehicle with a driver's license which had been suspended from May 17, 1985, till well after the time of the collision, that he had a history of driving while intoxicated, of driving reckless-

ly, of speeding, and other violations too numerous to list at this point.

The primary purpose of punitive damages is to warn others and punish the wrongdoer. Wilful or wanton conduct imports knowledge and consciousness that injury will result from the act done. Evidence relating to punitive damages, such as driver's traffic record, behavior traits, and history which affect driver's fitness to drive are relevant and admissible with respect to punitive damages and negligent entrustment. Wallen v. Allen, 231 Va. 289, 343 S.E.2d 73 (1986); Crowell v. Duncan, 145 Va. 489, 134 S.E. 576 (1926). In the instant case the Trial Court violated appellant's Federal First, Fifth and Seventh Amendment rights to: petition for a redress of his grievances; due process and

equal protection of the law and to a civil jury, respectively, on the issues of punitive damages, and negligent entrustment by striking all evidence in support thereof, and doing so in limine, prior to selection of jury and the presentation of any evidence on, inter alia, the appellee, David Carroll Clowser's history of addiction to drugs and alcohol, driving record and etc. In the case at bar and in the application of 3:18 of the Rules of Supreme Court of Virginia, the Trial Court in an abuse of its discretion and power chose to violate appellant's Federal Fifth and Fourteenth Amendment rights to due process and equal protection of the law, due to appellant's pro se status.

Denial of equal justice, wrongful discrimination between persons in similar circumstances, is at least as

vicious in judge-made as in statutory law. Connelly v. Western Union Tel. Co., 100 Va. 67, 40 S.E. 618 (1902); Yick Wo v. Hopkins, 6 S.Ct. 1064 (1886). In the case at bar the Trial Court violated appellant's Federal Fifth, Fourteenth and Seventh Amendment rights, to due process, equal protection of the law (due to appellant's pro se status), and to a civil jury on the issue of punitive damages, respectively, in that appellant's jury instructions were struck by the Trial Court, in the application of Rule 3:18. That is the Trial Court refused to give the jury any of the appellant's instructions, on the grounds that said instructions were not in the proper format, in that each of the instructions were not on individual pages. Yet the Trial Court chose to accept the appel-

lees' instructions despite the fact that the judge reprimanded them for failing to cite authorities and for prematurely lettering the instructions. The Trial Court arbitrarily, capriciously, discriminatorily, and in an abuse of discretion, violated appellant's Federal Fifth Amendment right to due process and equal protection of the laws (due to appellant's pro se status), and violated his Federal Seventh Amendment right to a civil jury on the issue of punitive damages in that said instructions contained appellant's claims for punitive damages, negligent entrustment and negligence.

In Frazier v. Collins, 538 F.Supp. 603, (E.D.Va.1982), the District Court held that it has a duty to assist a pro se litigant who may not understand the Rules of Civil Procedure. In the instant case the Trial Court refused to assist

the appellant with the submission of his jury instructions, by either accepting the jury instructions as is, or with modifications.

In exceptional cases this Court will note probable jurisdiction on questions not raised or resolved in the lower court. Youakim v. Miller, 96 S.Ct. 1399 (1976). A challenge raised for the first time in this Court will be reviewed when based on nonfrivolous constitutional grounds. Glidden Co. v. Zdanok, 82 S.Ct. 1459 (1962). In the case at bar it may be argued that the appellant failed to explicitly challenge the facial constitutionality of Rule 3:18, in such a case the appellant would argue that he did notify the Trial Court and the Virginia Supreme Court that the application of said Rule violated his rights under the

constitution albeit Rule 3:18 was not specifically cited it was alluded to. Therefore appellant would seek to have this Court review the issues, questions and challenges raised for the first time in this Court on the grounds that they are nonfrivolous and constitutional and that this case is exceptional and that a plain miscarriage of justice would result unless this Court notes probable jurisdiction on the aforesaid issues, questions and challenges. Hormel v. Helvering, 61 S.Ct. 719 (1941).

2. Rule 3:17 of the Rules of the Supreme Court of Virginia is unconstitutional in its application and/or on its face, in that the Trial Court in application of said rule abused its discretion and power and violated pro se appellant's Federal Sixth and Ninth Amendment right to represent his son, third-

party defendant appellant, Rick S. Sterner, and/or violated Rick S. Sterner's Federal Sixth and Ninth Amendment right to be represented by his father and/or a lay advisor, made applicable to the states by the Fourteenth Amendment, by granting appellees' third-party motion for judgment against Rick Sterner (J. 5-6).

The Trial Court violated appellant and third-party defendant appellant, Rick Sterner's Federal Sixth and Ninth Amendment right to the assistance of counsel, lay advisor, or self, in that in the application of Rule 3:17 of the Rules of the Supreme Court of Virginia, it ruled that Rick Sterner was in default, and that bill of particulars filed against appellees, was invalid because it was filed by appellant (father) rather than

by a lawyer, thereby rendering Rick's answer a nullity.

In U.S. v. Scott, 521 F.2d 1188 (9th Cir.1975) the Ninth Circuit cites Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45L.Ed.2d 562 (1975), in which the Court intimates that the Sixth Amendment right to "Assistance of Counsel" may encompass the assistance of lay advisors. As the Court pointed out:

> The first lawyers were personal friends of the litigant, brought into court by him so that he might "take 'counsel' with them" before pleading. 1 Pollock & Maitland, History of English Law 211 (1909). Similarly, the first "attorneys" were personal agents, often lacking any professional training, who were appointed by those litigants who had secured royal permission to carry on their affairs through a representative, rather than personally. Id., at 212-213. At 820 n.16, 95 S,Ct. at 2534.

Faretta, supra, also states in pertinent part that:

> ...the Star Chamber has for centuries symbolized disregard of basic individual rights. The Star Chamber not merely

allowed but required defendants to have counsel...

Faretta, supra, cites 1 B. Schwartz, The Bill of Rights:

A Documentary History 130 (1971) (hereinafter Schwartz), provided:

"That, in all courts all persons of all persuasions may freely appear in their own way, and according to their own manner, and there personally plead their own cause themselves; or, if unable by their friends..."

In the case at bar the Trial Court has also disregarded appellant and third-party defendant appellant, Rick Sterner's Sixth and Ninth Amendment right to assistance of lay advisor, in that it had ruled that bill of particulars as answer to appellees' motion for judgment against third-party defendant appellant, Rick Sterner, was done by appellant pro se, a non-lawyer, rendering said answer null and void, thereby making it compulsory and required that Rick

Sterner obtain a lawyer. The Trial Court's application of Rule 3:17 has Star Chamber written all over it, it is this type of disregard of basic individual rights that the framers of the constitution fought, long and hard to prevent, and now in this case it has again reared its ugly little head.

The question of Rick Sterner's Federal Sixth and Ninth Amendment right to be represented by appellant pro se, Stanley Sterner, his father and a non-lawyer, is one of first impression, in that it presents a question of law that was never before considered by any court. In Faretta v. California, 95 S.Ct. 2525 (1975) the Court points out that:

> The Founders believed that self-representation was a basic right of free people. Underlying this belief was not only the anti-lawyer sentiment of the populace, but also the "natural law" thinking that characterized the Revolu-

tion's spokesmen.....
At n.39, 95 S.Ct. at 2538.

The Court also points out that:

...for all cases, civil and criminal, "that no person or persons shall be compelled to fee any attorney or councillor to plead his cause..
At n.37, 95 S.Ct. at 2538.

In the instant case the Trial Court refused to allow pro se appellant to represent his son, the third party defendant. Thereby effectively ruling that appellant's son could not hope to defend himself unless compelled to be represented by a lawyer. Faretta, supra, states in relevant part that:

...It is one thing to hold that every defendant, rich or poor, has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want...the Founders...notion of compulsory counsel was utterly foreign to them. And whatever else may be said of those who wrote the Bill of Rights, surely there can be no doubt that they understood the inestimable worth of free choice.

Faretta, supra, also states in relevant

part that:

...To force a lawyer on a defendant can only lead him to believe that the law contrives against him...

In the case at bar the Trial Court in the application of Rule 3:17 violated Rick Sterner's Federal Sixth and Ninth Amendment rights by entering default judgment against the third party defendant, for failing to retain a lawyer and exercising his Federal Sixth and Ninth Amendment right to freely choose to be represented by his father, appellant pro se, Stanley Sterner. Clearly the Trial Court has not only violated Rick Sterner's Federal Sixth and Ninth Amendment right, but also his Federal Fifth Amendment right to due process of law.

In Bowers v. Hardwick, 54 L.W. 4919 (1986), this Court held by reason of the Ninth Amendment and the Due Process

Clause of the Fourteenth Amendment, that fundamental liberties are characterized as liberties that are deeply rooted in this nation's history and traditions. In the case at bar the Trial Court in the application of Rule 3:17, entered judgment by default against Rick Sterner for failing to obtain an attorney, thereby violating the Due Process Clause of the Fourteenth Amendment, Ninth and Sixth Amendment fundamental rights of Rick Sterner to choose the assistance of an lay advisor (his father Stan Sterner). Faretta, supra.

In Petry v. Flaugher, 505 F.Supp. 1087, (D.C. Ky.1981), the District Court held that a law regulating a fundamental right as defined by history and tradition, is subject to strict scrutiny by courts to determine if it is justified by a compelling, state interest. In the

case at bar, there is no compelling state interest in the application of Rule 3:17, with respect to compelling Rick Sterner to obtain an attorney as opposed to choosing a lay advisor (Stan Sterner his father), in order to answer third-party plaintiffs', appellees' motion for judgment.

In exceptional cases this Court will note probable jurisdiction on questions not raised or resolved in the lower court. Youakim v. Miller, 96 S.Ct. 1399 (1976). A challenge raised for the first time in this Court will be reviewed when based on nonfrivolous constitutional grounds. Glidden Co. v. Zdanok, 82 S.Ct. 1459 (1962). In the case at bar it may be argued that the appellant failed to explicitly challenge the facial constitutionality of Rule 3:17, in such a case

the appellant would argue that he did notify the Trial Court and the Virginia Supreme Court that the application of said Rule violated his rights under the constitution albeit Rule 3:17 was not specifically cited it was alluded to. Therefore appellant would seek to have this Court review the issues, questions and challenges raised for the first time in this Court on the grounds that they are nonfrivolous and constitutional and that this case is exceptional and that a plain miscarriage of justice would result unless this Court notes probable jurisdiction on the aforesaid issues, questions and challenges. Hormel v. Helvering, 61 S.Ct. 719 (1941).

CONCLUSION

For the foregoing reasons, the Court should summarily reverse the decision

below and remand the case to the Supreme Court of Virginia with directions to develop a factual record adequate to serve as the basis for constitutional adjudication.

In the alternative, the Court should note probable jurisdiction of this appeal and set it down for plenary briefing and argument. In the event that appellate jurisdiction under 28 USC Sec. 1257(2) is found lacking, the papers be acted upon as a petition for certiorari pursuant to 28 USC Sec. 2103. Kulko v. Superior Court of California, Etc., 98 S.Ct. 1690 (1978). Furthermore this Court should note probable jurisdiction of this appeal pursuant to the appellant's First Amendment right to petition this Court for the redress of his grievances. McDonald v. Smith, 105

S.Ct.2787 (1985); Wayte v. U.S., 105 S.Ct. 1524 (1985); Laker Airways Ltd. v. Pan American World Airways, 604 F. Supp. 280 (1984). In addition this Court should, in the light of appellant's pro se status, read and construe liberally his appeal and not hold it to the same strict pleading requirements otherwise required of attorneys. Hudspeth v. Figgins, 584 F.2d 1345 (4th Cir.1978); Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir.1977).

Dated this 15th day of September, 1988.

Respectfully submitted,

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Appellant Pro Se
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APPENDIX A

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

STANLEY STERNER, et al.
Appellants pro se,

v.

CAROL J. JONES, et al.,
Appellees.

RECORD NO. 880044
CIRCUIT COURT NO. 86-L-98

ORDER

From the Circuit Court of the City of Winchester

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

Justice Whiting took no part in the consideration and decision of this case.

A Copy,

Teste:

David B. Beach, Clerk

Dated this 23rd day of May, 1988.

APPENDIX B

IN THE CIRCUIT COURT
OF THE CITY OF
WINCHESTER VIRGINIA

STANLEY STERNER,
Plaintiff pro se,

v.

CAROL J. JONES
DAVID CARROLL CLOWSER, JR.
CHAD SHANHOLTZ,
Defendants.

CIRCUIT COURT NO. 86-L-98

FINAL JUDGMENT ORDER

This matter came before the Court on September 10, 1987, on the Amended Motion for Judgment filed by the plaintiff and the answers and grounds of defense filed by the third-party defendants, Carol J. Jones, Chad Shanholtz, and David Clowser; and the Third-Party Motion for Judgment filed against the third-party defendant Rick Sterner and

the other pleadings filed herein; and

Whereupon prior to selecting a jury the Court heard motions in limine and other matters and heard the motion of the defendants for default judgment against the third-party defendant Rick Sterner for failure to answer the Third-Party Motion for Judgment; and

Whereupon it appearing to the Court that the third-party defendant Rick Sterner had failed to answer despite being properly served, the Court held that the third-party defendant was in default;

Whereupon, seven jurors were selected from a panel of 13 veniremen and after hearing the opening argument of counsel and the evidence of the plaintiff, the defendants moved the Court to strike the plaintiff's claim for punitive damages

and furthermore to strike the claim as to each of the defendants; and

Whereupon it appearing to the Court that the amended Motion for Judgment against the defendants Carol Jones and Chad Shanholtz should be dismissed; and

Whereupon it appearing to the Court that the claim for punitive damages should be dismissed; the Court granted the Motion to Strike as to these claims with the plaintiff noting his exception thereto; and

Whereupon the Court further heard the Motion to Strike of the defendant David Clowser and this motion was denied with the defendant noting his exception thereto; and

Whereupon the Court heard the evidence on behalf of the defendant; and

Whereupon the plaintiff offered rebuttal evidence with the defendant renewing

his Motion to Strike with said motion being denied and the defendant noting his exception thereto; and

Whereupon the jury heard the instructions of the Court and the closing argument of counsel and retired to render its verdict; and

Whereupon the jury returned into open Court and rendered its verdict in favor of the plaintiff in the amount of $211.86 with the jury being discharged; and

Whereupon it is and shall be ORDERED that the amended Motion for Judgment against the defendants, Chad Shanholtz, Carol J. Jones shall be and hereby is dismissed with prejudice and;

It is further ORDERED that the plaintiff shall recover a judgment in the amount of TWO HUNDRED ELEVEN DOLLARS AND

EIGHTY SIX CENTS ($211.86) with interest from the date of judgment from the defendant David Clowser; and

It is further ORDERED the the third-party defendant Rick Sterner is in default and judgment is entered in behalf of the defendant David Clowser against the third-party defendant Rick Sterner and that the third-party defendant shall be and hereby is ordered to indemnify the third-party plaintiff for any and all payments which are made pursuant to this judgment herein.

THIS ORDER IS FINAL.

ENTERED this 13th day of October,1987.

PERRY W. SARVER

SEEN AND EXCEPTION NOTED:

John D. McGavin, Esquire
LEWIS, TYDINGS, BRYAN,
TRICHILO & STOCK, P.C.
4114 Leonard Drive
Post Office Box 250
Fairfax, Virginia 22030

SEEN AND EXCEPTION NOTED:

Stanley Sterner
Plaintiff, pro se
2544 Wilson Blvd.
Apartment 104
Winchester, Virginia 22601

APPENDIX C

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

STANLEY STERNER, et al.
Appellants pro se,

v.

CAROL J. JONES, et al.,
Appellees.

RECORD NO. 880044
CIRCUIT COURT NO. 86-L-98

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE
UNITED STATES

Notice is hereby given that the appellant pro se, Stanley Sterner, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Virginia refusing the

appellant's petition for appeal, entered in this case on May 23, 1988.

This appeal is taken pursuant to USC Const.Amend. 1, 28 U.S.C. sec. 1257(2) and 28 U.S.C. sec. 2103.

Filed the 19th day of August, 1988.

Respectfully submitted,

Stanley Sterner
Appellant Pro Se
2544 Wilson Blvd.
Apartment No. 104
Winchester Va. 22601
(703) 667-6246

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 1988, a true copy of the foregoing Notice of Appeal was mailed, or delivered to:

John D. McGavin
LEWIS, TYDINGS,
BRYAN & TRICHILO, P.C.
4114 Leonard Drive
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Counsel for Appellees
Carol J. Jones, et al.

Stanley Sterner